

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

BUILDING OWNERS AND MANAGERS  
ASSOCIATION OF METROPOLITAN  
ST. LOUIS, INC.,

Plaintiff,

vs.

CITY OF ST. LOUIS, MISSOURI,

Defendant.

Case No. 4:08-CV-352 HEA

**STATUS REPORT**

Comes now Plaintiff Building Owners and Managers Association of Metropolitan St. Louis, Inc. ("BOMA") and, pursuant to this Court's June 29, 2010 Order, provides the following status report regarding the state court proceedings:

1. On March 22, 2010, the Circuit Court for the City of St. Louis, the Honorable Robert H. Dierker presiding, entered summary judgment in favor of BOMA and against Defendant City of St. Louis, Missouri ("City") on BOMA's state law claims. The state court held that the City ordinance at issue violated various provisions of the Missouri Constitution, declared the ordinance void, and enjoined the City from enforcing the ordinance.

2. On April 30, 2010, the City filed its Notice of Appeal from the state court's judgment in the Eastern District of the Missouri Court of Appeals. On May 28, 2010, the City filed the Legal File. The City's appeal remains pending.

3. BOMA hereby advises this Court that in the event the City ultimately is successful in the state court proceeding BOMA will proceed with its federal law claims in this Court. Further, in the event BOMA ultimately is successful in the state court proceeding BOMA

intends to return to this Court to seek its attorneys fees and costs incurred in this Court and in the state court proceedings pursuant to 42 U.S.C. § 1988(b) and *Maier v. Gagne*, 448 U.S. 122 (1980) (attorneys fees award appropriate where "plaintiff prevails on a wholly statutory, non-civil-rights claim pendent to a substantial constitutional claim"). *See also, Gerling Global Reins. Corp. v. Garamendi*, 400 F.3d 803 (9<sup>th</sup> Cir. 2005); *Exeter-West Greenwich Reg. School Dist. V. Pontarelli*, 788 F.2d 47 (1<sup>st</sup> Cir. 1986).

WHEREFORE, Plaintiff Building Owners and Managers Association of Metropolitan St. Louis, Inc. prays that the stay entered by this Court on November 11, 2008 remain in effect until the state court proceedings are concluded, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By /s/John W. Moticka  
John W. Moticka, #3903  
168 N. Meramec Ave., Suite 400  
St. Louis, Missouri 63105  
Telephone: 314-259-4500  
Fax: 314-259-4599  
E-mail: [jmoticka@stinson.com](mailto:jmoticka@stinson.com)

*Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of July, 2010, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Carl W. Yates III  
Associate City Counselor  
Office of the City Counselor  
City of St. Louis Law Department  
1200 Market Street  
City Hall, Room 314  
St. Louis, MO 63103  
Telephone: 314-622-3361  
Fax: 314-622-4956  
*Attorneys for Defendant*

/s/John W. Moticka